

**\*\* Bell Operating Companies Manual of Construction Procedures (Blue Book)**

Example:-

1" - Anchor Rod - 26M Capacity-

Total of Guy strands - 10M (TEL) plus 11M (EL) plus 4.7M CATV=25.7M

6 - If it is determined that an anchor does not have sufficient unused capacity to allow the attachment of the Licensee, a License shall not be issued. The Licensee will then have the following options:

- (a) The licensee can obtain right-of-way and place its own anchor and guy.
- (b) For sidewalk anchors only, the Licensee can request that the Licensor of the pole replace the existing anchor with an anchor having larger capacity at the Licensee's expense.
- (c) The Licensee can request at Licensee's expense that the Licensor and Joint User reevaluate the existing guy capacity versus' the required guy strength for the stress on the pole, to determine if the existing guys are oversized. Licensee's permission to attach would then be based on the actual requirements of the existing guys.

SCHEDULE OF RATES FOR  
NEW YORK TELEPHONE COMPANY  
STANDARD POLE ATTACHMENT  
FILED WITH NEW YORK STATE PUBLIC  
SERVICE COMMISSION AS OF JANUARY 1, 1991

1. RATE

Pole Attachment Annual Rate - \$8.97

per attachment per pole per year. Attachment to anchors that are authorized is included in the above fee.

Pole Attachment Rate for an optional one-time payment-  
The formula for determining the one-time payment is:

$$P = F \times P/W$$

where

P is the one-time payment

F is the current Annual Attachment Fee filed with the Public Service Commission

P/W is the present worth of an annuity, compounded annually to 30 years, at the interest rate currently paid by the Licensor on deposit of its subscribers.

2. COMPUTATION

For the purpose of computing the total attachment fees due hereunder, the total fee shall be based upon the number of attachments licensed whether or not attachments are actually made on the fifteenth (15) day of June and the fifteenth (15) day of December of each year. The first payment of the annual charge for licenses granted under this Agreement shall be prorated from the month of issuance of the license to the first regular payment date at the rate of seventy-five (.75) cents a month per pole attachment.

3. PAYMENT DATE

Attachment fees shall be due and payable semi-annually, in advance, on the 31st day of January for the first half of the calendar year and on the 31st day of July for the last half of the calendar year. Failure to pay such fees within thirty (30) days after presentment of the bill therefor or on the specified payment date, whichever is later, shall constitute default under this Agreement.

4. TERMINATION OF LICENSE

a) Annual Rate

Upon termination of a license granted hereunder, the applicable attachment fee shall be pro-rated at the rate of seventy-five (.75) cents a pole attachment per month remaining in the period for which rental has been paid.

b) One Time Payment

Open termination of a license granted hereunder, the applicable attachment fee shall be retained by the Licensor except that, if within the first 30 years of issuance of a license under the one-time payment option, Licensor revokes such license under circumstances where Licensee's facilities thereunder cannot be relocated pursuant to Article VII of the Pole Attachment Agreement, Licensor shall refund to the Licensee a pro-rated portion of the one-time payment charge calculated for such 30 year period. The attachment fee is not transferable to another pole.

E.E.O. COMPLIANCE UNDERTAKING

## I. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

In accordance with Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375, date October 13, 1967, and U.S. Code of Federal Regulations, Title 41-Public Contracts and Property Management, Chapter 60-Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, Part 60-1-Obligations of Contractors and Subcontractors, the parties include in this contract the following understanding and agreement:

A. FOR CONTRACTS EXCEEDING \$10,000  
EQUAL EMPLOYMENT OPPORTUNITY CLAUSE (41 CFR 60-1.4)

During the performance of this contract \_\_\_\_\_  
(hereafter referred to as Contractor) agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the present rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of the paragraphs (1) through (7) in every subcontract or purchase order unless exempted by such rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204, of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor, or vendor as the result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### B. CERTIFICATION OF NONSEGREGATED FACILITIES (41 CFR 60-1.8)

The contractor certifies to New York Telephone Company that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It understands and agrees that a breach of this certification may be violation of Equal Opportunity clause required by Executive Order 11246 of September 24, 1965.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are in fact segregated on the basis of race, color, religion, sex or national origin, because of habit, local custom or otherwise.

It further agrees that (except where it has obtained similar certification from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certification in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted similar certification for specific time periods):

"NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A certification of nonsegregated Facilities, as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967), must be submitted prior to the award of a subcontract exceeding \$10,000 which is not except from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually, or annually)."

NOTE: "Whoever knowingly and willfully makes any false, fictitious or fraudulent

representation may be liable to criminal prosecution under 18 U.S.C. 1001."

**C. FOR CONTRACTS EXCEEDING \$50,000 WITH CONTRACTOR WITH 50 OR MORE EMPLOYEES (41 CFR 60-1.40) AFFIRMATIVE ACTION PROGRAM CERTIFICATION**

The contractor, (or subcontractor) certifies to the New York Telephone Company that it has developed or will develop a written affirmative action compliance program in accordance with the requirements set forth in Title 41-Public Contracts and Property Management, Chapter 60-Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, Part 60-1-Obligations of Contractors and Subcontractors, Section 60-1.40, Code of Federal Regulations, effective July 1, 1968, as amended.

**D. CONTRACTOR'S INFORMATION REPORT CERTIFICATION (41 CFR 60-1.7)**

The contractor, (or subcontractor) certifies to New York Telephone Company that E.E.O. -1, Standard Form 100 promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission and Plants for Progress, has been or will be filed in accordance with the requirements set forth in Title 41-Public Contracts and Property Management, Chapter 60-Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, Part 60-1-Obligations of Contractors and Subcontractors, Section 60-1.7 Code of Federal Regulations, effective July 1, 1968, as amended.

**II. MINORITY BUSINESS ENTERPRISES (41 CFR 1-1. 1310-2)**

In accordance with Executive Order No. 11625, dated October 13, 1971, and U.S. Code of Federal Regulations, Title 41-Public Contracts and Property Management, Chapter 1-Federal Procurement Regulations, Part 1-1.13-Minority Business Enterprises, as such may be amended from time to time, the parties include in this contract the following understanding and agreement:

**FOR CONTRACTS EXCEEDING \$5,000—  
UTILIZATION OF MINORITY BUSINESS ENTERPRISES**

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

**FOR CONTRACTS EXCEEDING \$500,000—  
MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM**

(a) The Contractor agrees to establish and conduct a program which will enable

minority business enterprises (as defined in the clause entitled Utilization of Minority Business Enterprises”), to be considered fairly as subcontractor and suppliers under this contract. In this connection, the Contractor shall—(1) Designate a liaison officer who will administer the Contractor’s minority business enterprises program. (2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all “make-or-buy” decisions. (3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises. (4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises. (5) Include the Utilization of Minority Business Enterprises clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities. (6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor’s minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct. (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4), above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

## II. LISTING OF EMPLOYMENT OPENINGS FOR VETERANS (41 CFR 50-250.2)

In accordance with Executive Order No. 11701, dated January 24, 1973, and U.S. Code of Federal Regulations Title 41-Public Contracts and Property Management, Chapter 50, Part 50-250-Veteran’s Employment Emphasis Under Federal Contracts, as such may be amended from time to time, the parties include in this contract the following understanding and agreement.

### FOR CONTRACTS \$2,500 OR MORE —

The contract clauses relating to listing employment openings that may be suitable for qualified disabled veterans and veterans of the Vietnam era, with the local office of the State employment service, contained in 41 CFR 50-250.2 are adopted and incorporated herein by this reference.

### FOR CONTRACTS \$10,000 OR MORE —

The provisions of PL 93-508, 38 U.S.C. 42 Sections 2012 and 2014 requiring affirmative action in the hiring and advancement of qualified disabled veterans and veterans of the Vietnam era are adopted and incorporated herein by this reference.

## IV. EMPLOYMENT OF THE HANDICAPPED CLAUSE (10 CFR 741.3)

In accordance with Executive Order No. 11758, dated January 17, 1974, and U.S. Code of Federal Regulations, Title 20-Employees’ Benefits, Chapter VI—Employment Standards Administrations, Department of Labor, Subchapter C—Rehabilitation Act of 1973 (Public Law 93-112, Section 503), Part 741—Affirmative Action Obligations of Contractors and Subcontractors, as such may be amended from time to time, the parties include in this contract

the following understanding and agreement:

**FOR CONTRACTS EXCEEDING \$2,500—**

(a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The Contractor agrees that, if a handicapped individual files a complaint with the Contractor that he is not complying with the requirements of the Act, he will (1) investigate the complaint and take appropriate action consistent with the requirements of 20 CFR 741.29 and (2) maintain on file for three years, the record regarding the complaint and action taken.

(c) The Contractor agrees that, if a handicapped individual files a complaint with the Department of Labor that he has not complied with the requirements of the Act, (1) he will cooperate with the Department in its investigation of the complaint, and (2) he will provide all pertinent information regarding his employment practices with respect to the handicapped.

(d) The Contractor agrees to comply with the rules and regulations of the Secretary of Labor in 20 CFR Ch VI, Part 741.

(e) In the event of the Contractor's non-compliance with the requirements of this clause, the contract may be terminated or suspended in whole or in part.

(f) This clause shall apply to all subcontracts over \$2,500.

**FOR CONTRACTS UNDER \$500,000—**

Paragraphs (a) through (f) above and the following:

(g) The Contractor agrees (1) to establish an affirmative action program, including appropriate procedures consistent with the guidelines and the rules of the Secretary of Labor, which will provide the affirmative action regarding the employment and advancement of the handicapped required by PL 93-112, (2) to publish the program in his employee's or personnel handbook or otherwise distribute a copy to all personnel, (3) to review his program on or before March 31 of each year and to make such change as may be appropriate, and (4) to designate one of his principal officials to be responsible for the establishment and operation of the program.

(h) The Contractor agrees to permit the examination by appropriate contracting agency officials or the Assistant Secretary for Employment Standards or his designee, of pertinent books, documents, papers and records concerning his employment and advancement of the handicapped.

(i) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Assistant Secretary for Employment Standards, provided by the contracting officer stating contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.



(j) The Contractor will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

FOR CONTRACTS OVER \$500,000—

Paragraphs (a) through (j) above and the following:

(k) The Contractor agrees to submit a copy of his affirmative action program to the Assistant Secretary for Employment Standards within 90 days after the award to him of a contract or subcontract.

(l) The Contractor agrees to submit a summary report to the Assistant Secretary for Employment Standards, by March 31 or each year during performance of the Contract and by March 31 of the year following completion of the contract, in the form prescribed by the Assistant Secretary covering employment and complaint experience, accommodations made and all steps taken to effectuate and carry out the commitments set forth in the affirmative action program.

NOTE: Paragraphs (g) through (l) are only applicable for contracts and subcontracts which provide for performance of the work in 90 days or more and contracts of a continuing nature.

AGREED AND ACCEPTED

By \_\_\_\_\_

\_\_\_\_\_  
(Date)

FRANCHISED MUNICIPALITIES

DATE of REVISION \_\_\_\_\_

NAME of LICENSEE \_\_\_\_\_ AGREEMENT DATED \_\_\_\_\_

MUNICIPALITY

DATE OF FRANCHISE

( )

(C) CITY  
(T) TOWN  
(v) VILLAGE

# CONDUIT OCCUPANCY AGREEMENT

## TABLE OF CONTENTS

			<u>Page</u>
ARTICLE	I	SCOPE OF AGREEMENT	1
ARTICLE	II	DEFINITIONS	1
ARTICLE	III	GENERAL CONDITIONS	3
ARTICLE	IV	PROCEDURES	4
		1. Application for Authorization	4
		2. Multiple Applications	4
		3. Specifications	6
		Pre-Construction Surveys and Make-Ready Work	7
		Inspections of Licensee's Facilities	8
		8. Unauthorized Occupancies	9
ARTICLE	V	OTHER OBLIGATIONS OF LICENSEES	10
		1. Insurance	10
		2. Surety Requirements	11
ARTICLE	VI	LIABILITY AND DAMAGES	11
ARTICLE	VII	TERMINATIONS OF AUTHORIZATIONS	12
ARTICLE	VIII	RATES AND CHARGES	13
ARTICLE	IX	EQUAL EMPLOYMENT OPPORTUNITIES	14
ARTICLE	X	LICENSE NOT EXCLUSIVE	14
ARTICLE	XI	WAIVER OF TERMS AND CONDITIONS	14
ARTICLE	XII	TERM OF AGREEMENT	15
EXHIBIT	A	APPLICATION AND LICENSE FOR CONDUIT SYSTEM	16
EXHIBIT	B	PULLING IN REPORT	17
EXHIBIT	C	NOTIFICATION OF REMOVAL FROM CONDUIT SYSTEM	18
EXHIBIT	D	SCHEDULE OF RATES	19
EXHIBIT	E	FRANCHISED MUNICIPALITIES	21
EXHIBIT	F	PROCEDURE TO DETERMINE AVAILABILITY OF CONDUIT	22
EXHIBIT	G	EEO COMPLIANCE UNDERTAKING	24

## CONDUIT OCCUPANCY AGREEMENT

THIS AGREEMENT, made as of the \_\_\_\_ day of \_\_\_\_\_,  
19 \_\_, between NEW YORK TELEPHONE COMPANY, a corporation organized and existing under the laws of the State of New York, having its principal office at 1095 Avenue of the Americas, New York, New York 10036 (hereinafter called "Licensor"), and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_  
(hereinafter called "Licensee").

### WITNESSETH:

WHEREAS, Licensee for its own use desires to place and maintain cable facilities in the conduit system of Licensor; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of said cable facilities in its conduit system;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

### ARTICLE I

#### SCOPE OF AGREEMENT

Subject to the provisions of this Agreement, the Licensor will issue to Licensee for any lawful purpose revocable, nonexclusive licenses authorizing the installation of Licensee's cable facilities in Licensor's conduit system in the Franchised Municipality/Municipalities listed on the attached Exhibit E.

### ARTICLE II

#### DEFINITIONS

1. Conduit System

Any reinforced passage or opening in, on, under/over or through the ground capable of containing communications facilities, and includes: Main conduit; underground dips such as short sections of conduit under roadways, driveways, parking lots and similar conduit installations; laterals to poles or into buildings; ducts; and manholes.

2. Licensee

The person, corporation or other legal entity authorized by the Licensor under this Agreement to install its facilities in New York Telephone's conduit system and the party responsible for compliance with Licensor's regulations regarding such accommodations.

3. Licensee's Facilities

The cables installed for the Sole use of the Licensee.

4. Licensor

The owner of the conduit system and the party that issue's Licenses for conduit occupancy.

5. Make-Ready Work (Initial)

All work, including but not limited to the rearrangement of existing facilities, replacement of cable or any other activity required to accommodate the installation of Licensee's facilities in a conduit or manhole. Similar work required after initial installation in a conduit system solely because of the existence of the Licensee's facilities shall be referred to as additional Make-Ready.

6. Manhole

An underground enclosure where conduit(s) are terminated and provides ready access to conduit system.

7. Other Licensees

Any person, corporation, or other legal entity other than Licensee herein, to whom the Licensor has or hereafter shall extend an authorization to occupy its conduit system.

8. Penalties

Additional charges applied to non-compliance with the terms and conditions of the Agreement.

9. Periodic Inspection

Inspections conducted at irregular intervals on all or portions of Licensee's facilities, to determine that occupancies are authorized and are maintained in conformance with the required standards.

10. Post-Construction Inspection

The work operations performed to visually observe Licensee's cable facilities during or shortly after the completion of the construction of such facilities, to determine that all occupancies conform to the standards required by this Agreement.

11. Pre-construction Survey

The work operations performed in order to process an application for conduit occupancy to the point just prior to performing any necessary Make-Ready work. There are three elements of the Pre-construction Survey: 1) engineering record search to determine spare capacity of the conduit system, 2) field inspection of the existing facilities, to verify available spare facility and determine if make ready work is required, and 3) administrative effort required to process the application and prepare the Make-Ready work order.

12. Subsequent Inspections

The work operations performed in order to verify that corrective action has been taken by the Licensee on variances from required construction and maintenance practices reported to the Licensee by Licensor.

13. Occupancy Rate

A specified amount, revised periodically, and payable monthly, in advance to the Licensor for each occupancy.

### ARTICLE III

#### GENERAL CONDITIONS

1. Compliance with Applicable Laws

The Licensee and the Licensor shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

2. Rights in Licensor's Conduit System

No use, however extended, of a conduit system or payment of any fee or charge required hereunder shall create or vest in the Licensee any ownership or property right in such conduit system.

3. Requirement to Construct and Maintain a Conduit System

Nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend, repair, place, replace or maintain any underground facility not needed for the Licensor's own service requirements, except as provided in Article IV (3 b) and Article IV (5. f.)

4. Other Agreements

Nothing contained herein shall be construed as a limitation, restriction, or prohibition against the Licensor with respect to any agreement(s) and arrangement(s) which the Licensor has entered into, or may in the future enter into, with others not covered by this Agreement, except that authorizations for occupancies existing at the time of such future agreements or arrangements shall not be diminished. The rights of Licensee shall at all times be subject to such existing and further agreement(s) or arrangement(s). The Licensor, in negotiating and entering into any such agreement(s) and/or arrangement(s), shall give due and reasonable regard to the Licensee's continued accommodation in the conduit system.

5. Assignment of Rights

Licensee shall not assign, sub-license, sublet or transfer any authorization granted herein, and such authorization shall not inure to the benefit of Licensee's successors or assigns without the prior written consent of the Licensor. In the event such consents are granted by the Licensor, the provisions of this Agreement shall apply to and bind the Licensee's successors and assigns.

6. Permits and Consents

a. Licensee shall be responsible for obtaining from private and/or public authority any necessary easement, right of way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the conduit and/or manhole into which Licensee installs its facilities. The Licensor does not warrant the validity or apportionability of any rights it may hold to place facilities on private property. The Licensor will, upon written request by the Licensee, provide available information and copies of any documents in its files pertinent to the nature of the rights the Licensor possesses over private property. The cost of providing such information and reproducing documents shall be borne by Licensee.

b. Where Licensor has an easement over a public or private right of way sufficiently broad under New York State law to permit Licensee occupancy, Licensee shall not be required to obtain an independent easement from the property owner to place its facility. In any case where the Licensor seeks to obtain any necessary permission from a property owner for Licensee's facilities, the fully allocable cost of such efforts shall be paid by the Licensee along with Make-Ready costs, if any.

7. This Agreement supersedes all previous agreements between the parties for maintenance and placement of underground cable facilities by the Licensee and constitutes the entire agreement between the parties. It may not be modified or amended nor may any obligation of either party be changed or discharged except in writing signed by the duly authorized officer or agent of the party to be charged. Notice of changes in the occupancy rate (approved by the PSC) will be given as covered in Article III (8). Currently effective licenses, if any, issued pursuant to previous agreements shall remain in effect as if issued pursuant to this Agreement.

8. Any notice to be given to the Licensor under this Agreement shall be sent by certified mail to:

Any notice to be given to the Licensee under this Agreement shall be sent by certified mail to:

Any such notice shall be effective immediately upon being deposited in the United States mail.

9. If the presence of the Licensee in Licensor's conduit system causes Licensor to pay any new or additional tax which Licensor would not otherwise pay, Licensee shall reimburse Licensor to the full extent of such new or additional tax, as additional rent, within thirty (30) days of receiving a bill therefor from Licensor.

10. This Agreement shall be governed by, and interpreted according to, the laws of the State of New York.

#### ARTICLE IV

#### PROCEDURES

##### 1. Application for Authorization

a. Prior to the Licensee occupying any conduit, Licensee shall make written application for and have received an authorization therefor. (Exhibit A attached.)

b. Licensee shall file application for conduit occupancy authorizations which designate a desired priority of authorizations in blocks of 12 conduit sections or less.

c. The Licensor will accept applications on a first come first served basis and shall attempt to satisfy the designated priority of completions. Licensor shall, be obligated to perform the required preconstruction survey and/or Make-Ready work in accordance with the time frames set forth in paragraph (4) (k) of this Article to permit the issuance by the Licensor of a volume not to exceed a total of forty-eight (48) conduit section occupancy authorizations per month in each of the Licensor's plant construction operating areas, i.e., Western, Central, Northeastern, Mid-State, Long Island and each of the five Boroughs of the City of New York. If more than forty-eight (48) conduit section occupancies are included in all such applications received for any one month in each construction operating area, at least one block of 12 conduit sections or less per applicant, will be processed, selected in the sequence in which the application was received, until the forty-eight (48) conduit sections has been reached. If one block of 12 or less for each applicant is processed and the forty-eight (48) conduit section occupancies have not been exceeded, the remaining applications shall be processed on a first come first served basis.

##### 2. Multiple Occupancy Applications

The provisions of this Article IV 2 apply in the case of applications received by the Licensor from two or more Licensees for occupancy authorizations in the same conduit system, prior to the completion of the pre-construction survey and the commencement of any Make-Ready work required to accommodate any Licensee.

a. Applications received from multiple applicants for the same conduit system will be classified as follows:

(1) non-simultaneous - received by the Licensor on different business days.

(2) simultaneous - received by the Licensor on the same business day.

b. Where applications are non-simultaneous, the initial applicant will be offered the following options after applications(s) is received from the additional applicant(s):

Option 1 - the application of the initial applicant will be processed as if there is no other occupancy application on file for the same conduit section.

Option 2 - the applications of the initial and additional applicant(s) will be processed as if they were simultaneous applications.

(1) The initial applicant will be required to indicate the option desired no later than fifteen (15) days after the Licensor has quoted the Make-Ready charges that will apply under each option, otherwise the Licensor will deem the initial applicant to have selected Option 1. Selection of an option prior to the quotation of the aforementioned Make-Ready charges is permissible.

(2) Option 2 will be subject to acceptance by all of the multiple applicants involved. The additional applicant(s) will have fifteen (15) days from the date of receipt of written notification from the Licensor that the initial applicant has selected Option 2, to accept or reject the conditions applicable under Option 2, otherwise, the Licensor will deem the additional applicant(s) to have rejected such conditions.

(3) All work in progress on the initial applicant's application involving multiple applications will be suspended by the Licensor from the time that the initial applicant is offered Options 1 and 2 until it notifies the Licensor of the option it elects in accordance with (1) preceding.

c. Where multiple applicants are simultaneous or the initial applicant in the case of non-simultaneous applications has selected Option 2, the multiple applicants must develop mutually agreeable order of facility availability and overall Make-Ready work completion schedule. Where multiple applicants cannot reach mutual agreement regarding order of facility availability and an overall Make-Ready work completion schedule within fifteen (15) days of written notification from the Licensor of the charges for the required Make-Ready work, the Licensor will offer as an alternative to complete the total Make-Ready work required for all multiple applicants before simultaneously granting occupancy authorizations to the multiple applicants.

d. Any multiple applicant who fails to agree to the alternate arrangement set forth in (c) preceding within ten (10) days after being advised in writing of the availability of such alternate arrangement by the Licensor will be considered by the Licensor to have canceled its application(s) relative to those facilities which involve pending occupancy applications by other Licensees.

e. Where multiple applications are non-simultaneous and the initial applicant has selected Option 1, the Licensor:

(1) will consider the initial applicant as a non-multiple applicant. Any change of priority or facility availability or work schedule completion that is desired after either has been initially agreed upon by the initial applicant with the Licensor will be subject to the Licensor's ability to accommodate such changes in its established work schedule.

(2) will not perform the required Make-Ready work for the additional applicant until occupancy authorizations have been granted to the initial applicant, unless the performance of such work will not delay the completion of the Make-Ready work required to accommodate the initial applicant.

f. Preconstruction survey costs will be allocated as follows:

(1) Simultaneous applications - each applicant will bear an equal share of the total initial and resurvey costs involved.



(2) Non-simultaneous applications - each applicant will bear the costs related only to determining the accommodation requirements for its specific application.

g. Make-Ready cost will be allocated as follows:

(1) Simultaneous applications -

- a. each applicant will be charged an equal share of the total Make-Ready cost.
- b. if only one applicant agrees to the shared portion of total cost, that applicant will be quoted the cost applicable to accommodate a single licensee.

(2) Non-simultaneous applications -

- a. the initial applicant will be charged the total Make-Ready cost to accommodate its facilities.
- b. the additional applicant(s) will be charged the total added Make-Ready cost to accommodate the additional applicant's facilities.

3. Specifications

a. Licensee's facilities shall be placed, maintained, relocated or removed in accordance with the requirements and specifications of the current editions of the Bell Operating Companies Manual of Construction Procedures (Blue Book), the National Electrical Code (NEC), the National Electrical Safety Code (NEC) and rules and regulations of the Occupational Safety and Health Act (OSHA) and any governing authority having jurisdiction. Where a difference in specification may exist, the more stringent shall apply. Licensee's facilities shall not physically, electronically or inductively interfere with the Licensor's facilities.

1. While many of the standards and technical requirements for Licensee's cable, equipment and facilities are set forth in (a) above, Licensor reserves the right to specify the type of cable and construction standards required in situations not otherwise covered in this Agreement. In such cases, Licensor will in its discretion furnish to Licensee written material which will specify and explain the required construction.

2. Licensee shall provide written notice to the Licensor, at least fifteen (15) days in advance, of the exact conduit locations where Licensee's plant is to be constructed.

3. Rodding of ducts and placing of cable in Licensor's conduit system shall be done only when specific authorization for such work, and approval of the person, firm or corporation that will perform such work has been obtained in writing in advance from Licensor. Licensor retains the right to prescribe the manner in which such construction will be done and retains the right to specify what, if any, work shall be performed by Licensor.

4. Licensor reserves the right to prohibit all equipment and facilities, other than cable, from its manholes, pull boxes and handholes. Splices in Licensee's cables shall be located only in manholes, pull boxes or handholes.

5. Where a Licensee's duct physically connects with Licensor's manhole, Licensor shall designate the point of entrance. The section of duct which connects with the manhole shall be installed, at the Licensee's expense, by Licensor, its contractor or a contractor approved by Licensor. The "Manhole Entrance Fee" is specified in the "Schedule of Rates" (Exhibit D).

b. If any part of Licensee's facilities is not placed, maintained or relocated in accordance with the requirements and specifications, as stated herein, and if Licensee fails to correct any non-compliance with these standards within fifteen (15) days written notice to the Licensee, the Licenser may correct said conditions. However, when such conditions pose an immediate threat to the safety of the Licenser's employees, interfere with the performance of the Licenser's service obligations, or pose an immediate threat to the physical integrity of the conduit system or the cable facilities of the Licenser, the Licenser may perform such work and/or take such action that the Licenser deems necessary without prior notice to Licensee. The cost of said work and/or actions shall be borne by Licensee.

4. Pre-Construction Surveys and Make-Ready Work

a. A pre-construction survey will be required for each conduit section for which occupancy is requested to determine the availability of conduit space to accommodate Licensee's facilities (Exhibit F). In determining the availability of space in Licenser's conduit system, Licenser will consider its present and foreseeable communications and maintenance needs for conduit space. If conduit space is available, a license to occupy the conduit system will be granted to Licensee; provided, however, that Licenser will not warrant the condition of such conduit. The field inspection will be performed by representatives of the Licenser with optional participation by the Licensee(s).

b. In the event the Licenser determines that Licenser's cable facilities need rearrangement to accommodate the facilities of Licensee, the Licenser will inform Licensee in writing of the cost of the required Make-Ready work. Charges for Make-Ready work, including the cost of post-construction inspections, shall be as specified in Article VIII, Rates and Charges.

c. The Licenser shall specify the conduit to be occupied by Licensee's facilities and the location where and manner in which Licensee's cable will enter and exit Licenser's manholes, pull boxes or handholes. Clearing obstructions, repairs, dig-ups and any other work required to make a duct usable for the initial placing of Licensee's cable shall be done at Licensee's expense by the Licenser, its contractor or a contractor approved by Licenser.

d. Licensee shall have thirty (30) days from the receipt of written notification from the Licenser of the costs of Make-Ready work to accept and pay all Make-Ready costs; provided, however, that if the Licenser receives a request from another Licensee for an authorization to occupy the conduit system for which a written notification of Make-Ready work costs has been sent to Licensee, then Licensee must accept within fifteen (15) days after receipt of notification from the Licenser of the other occupancy request or until the end of the thirty (30) day period, whichever period of time is shorter.

e. All required Make-Ready work will be performed following receipt by the Licenser of payment of the cost of the Make-Ready work. Licensee shall also reimburse the owner(s) of other facilities occupying said conduit system for any expense incurred by them in rearranging their facilities to accommodate Licensee's facilities.

f. Should the Licenser, or other Licensee, for their own service requirements, need to install additional facilities in any conduit system in which Licensee occupies conduit space, Licensee will upon notice from the Licenser of the additional occupancy, rearrange its facilities in the conduit system as determined by the Licenser so that the additional facilities of the Licenser, or other Licensee may be accommodated. Licensee shall not be required to bear any of the costs of rearranging its facilities if such rearrangement is required as a result of an additional occupancy by any entity, including Licenser or other Licensees. Any rearrangement costs shall be borne by the entity or entities requesting rearrangement. Licensee shall be solely responsible for collecting any rearrangement costs incurred pursuant to this paragraph. Licenser's sole responsibility shall be limited to reimbursement of its pro rata share of such costs caused by its own additional occupancies. However, Licenser shall, upon receipt of written request, provide Licensee with any information in Licenser's possession which may facilitate Licensee's collection of such costs. If Licensee does not rearrange its facilities within sixty (60) days after receipt of written notice from the Licenser requesting such rearrangement, the Licenser may perform or have performed such rearrangement and Licensee shall pay the cost thereof.

The foregoing shall not preclude Licensee from thereafter seeking reimbursement of such rearrangements costs as if it had performed the work in accordance with this paragraph.

g. In an emergency, the Licensor may rearrange Licensee's facilities occupying a conduit or manhole.

h. Upon written notice by Licensor, Licensee shall promptly rearrange its facilities in the conduit system as required by Licensor to permit Licensor to perform any routine maintenance of the conduit system, including replacement of worn or damaged manholes, conduits, ducts, and laterals. Licensee shall be responsible for all costs associated with such rearrangements.

i. Licensee shall notify the Licensor in writing before adding to, relocating, replacing or otherwise modifying its facilities in a conduit system where additional space may be required.

j. When additional Make-Ready or related work is required as a result of circumstances beyond anyone's control, including but not limited to storms, accidents, or public work projects, Licensee is responsible for the timely repairing, relocating or replacing of its own facilities.

k. Unless prevented from doing so by circumstances beyond Licensor's reasonable control, including, but not limited to acts of god, fire, strikes, embargo, seasonal limitations on construction, acts or inaction of the Government, or acts or inaction of another Licensee, and subject to the quantity limitations set forth in paragraph (1) (c) of this Article, Licensor shall adhere to the following timetable in the performance of pre-construction and Make-Ready work:

(1) Upon receipt of a written application (Exhibits A), Licensor shall perform a pre-survey to determine whether Licensee's proposed occupancy can be accommodated and determine what, if any, Make-Ready work is required. Licensor shall complete these tasks within forty-five (45) days of receipt of Licensee's written application.

(2) If Make-Ready work is required and there are other entities occupying the same conduit section, Licensor shall send written notification to all such entities describing the proposed modifications to the conduit system based on Licensee's application. Entities receiving such notice shall have sixty (60) days to determine whether they wish to add to or modify their existing facilities and to submit written notification of their requirements to Licensor.

(3) Licensor shall design the Make-Ready work, or redesign the Make-Ready work to incorporate any additional requirements submitted by other entities in accordance with subparagraph (2) above, and estimate the costs of Licensor's Make-Ready work. Licensor shall complete these tasks within thirty (30) days of receipt of all written notifications of modification requirements or notifications that no additional requirements are sought.

(4) Licensor shall complete all its Make-Ready work within ninety (90) days of receipt of payment by Licensee of the estimated Make-Ready work costs. The foregoing Make-Ready commitments shall apply solely to Make-Ready work to be performed by Licensor. These commitments shall not apply to Make-Ready work to be performed by Joint Owners, Joint Users or other Licensees.

(5) Licensor shall not be considered in default of any of its obligations under this paragraph (k) unless such default continues for more than fifteen (15) days after Licensee shall have provided Licensor written notice specifying the nature of the default and, if applicable, the manhole location(s) in which Make-Ready work has not been performed.

##### 5. Inspections of Licensee's Facilities

a. The Licensor reserves the right to make post-construction, subsequent and periodic inspections (of any part or all) of Licensee's facilities occupying the conduit system at the expense of the Licensee as specified in Article VIII.

b. Licensee shall provide written notice to the Licensor, at least fifteen (15) days in advance, of the exact conduit locations where Licensee's plant is to be constructed.

c. The Licensee shall forward Exhibit B to the Licensor within five (5) days of the date(s) of the occupancy.

d. Within seven (7) days of the date of completion of a post-construction inspection, the Licensor shall notify Licensee in writing of the date of the completion of the Post-Construction Inspection.

e. Where Post-Construction Inspection by the Licensor has been completed within thirty (30) days of the date of notice of placement of Licensee's facilities required in (c.) above, Licensee shall be obligated to correct such non-complying conditions within fifteen (15) days of the date of the written notice from the Licensor. If corrections are not completed within said fifteen (15) day period, occupancy authorizations for the conduit system where non-complying conditions remain uncorrected shall terminate forthwith, regardless of whether Licensee has energized the facilities occupying said conduit system, and Licensee shall remove its facilities from said conduit system in accordance with the provisions of Article VII. No further occupancy authorization shall be issued to Licensee until such non-complying conditions are corrected or until Licensee's facilities are removed from the conduit system where such non-complying conditions exist.

f. Where such Post-Construction Inspection by the Licensor has not been completed within thirty (30) days of the date of notice of placement of Licensee's facilities, Licensee shall correct such non-complying conditions within fifteen (15) days of the written notice from the Licensor. If corrections are not made by Licensee within said fifteen (15) day period, the Licensor shall perform or have performed such corrections and Licensee shall pay to the Licensor the cost of performing such work.

g. Subsequent inspections to determine if appropriate corrective action has been taken may be made by the Licensor. Licensee shall reimburse the Licensor for the cost of such inspections as specified in Article VIII.

h. The making of post-construction, subsequent and periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability specified in this Agreement.

i. The costs of inspections made during construction and/or the initial post-construction survey shall be billed to the Licensee upon completion of the inspections. The cost of periodic inspection or any special inspection found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

j. Periodic inspections of the entire plant of the Licensee will not be made more often than once every five years and upon 30 days notice to Licensee unless in Licensor's judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of the Agreement by Licensee.

#### 6. Unauthorized Occupancies

a. If any facilities of the Licensee shall be found occupying a conduit system for which authorization has not been granted by the Licensor, the Licensor, without prejudice to its other rights or remedies under this Agreement, including termination or otherwise, may impose a charge and require the Licensee to submit in writing, within ten (10) days after receipt of written notification from the Licensor of the unauthorized occupancy, a conduit occupancy application (Exhibit A). If such application is not received by the Licensor within the specified time period, the Licensee will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, or the Licensor may remove the Licensee's facilities without liability, and the cost of such removal shall be borne by the Licensee.

b. For the purpose of determining the applicable charge, the unauthorized conduit occupancy shall be treated as having existed for a period of five (5) years prior to its discovery; or for the period beginning with the date of the initial Agreement, whichever period shall be shorter, and the charges, as specified in Article VIII, shall be due and payable forthwith whether or not Licensee is permitted to continue the occupancy of the conduit system.

c. No act or failure to act by the Licensor with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy; and, if any authorization should be subsequently issued said authorization shall not operate retroactively or constitute a waiver by the Licensor of any of its rights or privileges under this Agreement or otherwise, provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized occupancy from its inception.

## ARTICLE V

### OTHER OBLIGATIONS OF LICENSEES

#### 1. Insurance

a. Licensee shall carry insurance policies issued by an insurance carrier licensed to operate in the State of New York to protect the Licensor as named or additional insured from and against any and all claims, demands, actions, judgments, costs, and/or expenses, including attorney's fees, and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in Article VI.

b. The amounts of such insurance:

(1) against liability due to injury or the death of persons shall be not less than \$1,000,000 as to any one person and \$1,000,000 to any one occurrence, and

(2) against liability due to damage to property shall be not less than \$1,000,000 as to any one occurrence.

c. Licensee shall also carry such insurance as will protect Licensee from all claims under any Worker's Compensation Law in effect that may be applicable.

d. All insurance must be effective before the Licensor shall issue authorizations for occupancy of facilities to any conduit system, and shall remain in force as long as Licensee's facilities remain within any conduit system. In the event that Licensee shall fail to maintain the required insurance coverage, the Licensor may pay any premiums thereon falling due and the Licensee shall reimburse the Licensor for any such payments made.

e. Licensee shall submit to the Licensor certificates by each company insuring Licensee for all liabilities of Licensee referred to in Article VI. Licensee's insurance policies shall provide that Licensee will not cancel or amend any such policy of insurance issued to Licensee except after thirty (30) days prior written notice to the Licensor.

f. Licensee shall promptly advise the Licensor of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the installation, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities. Copies of all accidents reports and statements made to the insurer by the Licensee, or others, shall be furnished promptly to the Licensor.

g. The Licensee at Licensor's option may be self-insured with regard to its liability under the terms of this agreement.

## 2. Surety Requirements

Licensee shall furnish a bond or other satisfactory evidence of financial security in an amount specified as follows to guarantee the payment of any sums which may become due to the Licensor for occupancy fees due hereunder and any other charges for work performed for Licensee, by the Licensor, including the removal of Licensee's facilities upon termination of any authorization issued hereunder. Termination of this Agreement shall not release the Licensee from any liability obligation under the Agreement.

a. Licensee shall furnish a cash deposit, bond, irrevocable Letter of Credit or other security satisfactory to the Licensor in the following amounts: Security in the amount of (\$40,000) for the first 10,000 feet of conduit to be licensed under this agreement and (\$4,000) for each additional 1,000 feet. The amount of security required here under shall not exceed \$300,000, nor be less than \$40,000. Security will not be required where the total of Licensee's occupancies do not exceed two hundred and fifty (250) feet.

b. If the financial security is in the form of a bond or irrevocable Letter of Credit, such instrument shall be issued by a surety company or bank satisfactory to the Licensor. The instrument shall contain a provision that the Surety Company or Bank will pay to the Licensor within the dollar limits of the instrument any sum demanded by the Licensor as due under this Agreement, whether or not the Licensee contests its liability to pay such sum, and whether or not the Licensor exercises or has exercised any option it may have to terminate. If any such amounts are paid by the Surety Company or Bank, the Licensee shall restore the Surety Bond or Letter of Credit to the full amount required under this Article, within thirty (30) days after notice of such payment is sent to the Licensee.

c. If the security is in the form of a cash deposit, interest at the rate generally paid by the Licensor on deposits shall be credited to the Licensee during the continuance of the deposit. If the Licensee shall fail to pay any sum demanded by the Licensor as due under the provisions of this Agreement, the Licensor shall have the right, without prior notice to the Licensee forthwith to apply any or all amounts on deposit with it to payment of the sum due, whether or not the Licensee contests its liability to pay such sum, and whether or not the Licensor exercises or has exercised any option it may have to terminate. If any such amounts are applied to payment of sums due to the Licensor, Licensee shall restore to its deposit the amounts so applied within thirty (30) days after notice to Licensee of such application.

d. The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

## ARTICLE VI

### LIABILITY AND DAMAGES

1. Licensor reserves to itself, its successors and assigns, the right to relocate and maintain its conduit system and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. The Licensor shall be liable to Licensee only for and to the extent of any damage caused the negligence of the Licensor's agents or employees to Licensee's facilities occupying Licensor's conduit system. The Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's facilities arising in any manner out of Licensee's use of Licensor's conduit system.

2. Licensee shall indemnify, protect and save harmless the Licensor from and against any and all claims, demands, causes of action and costs, including attorneys' fees, for damages to property and injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the installation, maintenance, repair, replacement, presence, use or removal of Licensee's facilities or by their proximity to the facilities of all parties occupying Licensor's conduit system or by any act of omission of Licensee's employees, agents or contractors.

3. Licensee shall indemnify, protect and save harmless the Licensor from any and all damages, cost, and expenses imposed on the Licensor as a result of the presence of the occupancy in the

conduit system and/or acts by the Licensee, its employees, or its agents or contractors, including but not limited to damages, costs and expense of relocating conduit systems resulting from loss of right-of-way or property owner consents and/or the costs and expense of defending these rights.

4. Licensee shall indemnify, protect and save harmless the Licensor from any and all claims, demands, and costs, including attorneys' fees, which arise directly or indirectly from the operation of Licensee's facilities, including taxes, special charges by others, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims, demands and cost, including attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's facilities in combination with the utility's conduit system or otherwise.

5. Should the Licensor remove Licensee's facilities from the Licensor's conduit system under Article VII, the Licensor will deliver to the Licensee the facilities so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due the Licensor. The Licensor shall have a lien on Licensee's facilities removed from Licensor's conduit systems, with power of public or private sale, to cover any amounts due the Licensor. Such liens shall not operate to prevent the Licensor from pursuing, at its option, any other remedy in law, equity or otherwise.

## ARTICLE VII

### TERMINATIONS OF AUTHORIZATIONS

1. In addition to rights of termination provided to the Licensor under other provisions of this Agreement, the Licensor shall have the right to terminate conduit occupancy, manhole occupancy, and/or manhole entrance authorizations and rights granted under provisions of this Agreement where:

- a. the Licensee's facilities are maintained or used in violation of any law or in aid of any unlawful act or undertaking, or
- b. the Licensee ceases to have authority to construct and operate its facilities on public or private property at the location of the particular conduit system covered by authorization; or
- c. the Licensee fails to comply with any of the terms and condition of this Agreement or defaults in any of its obligations thereunder; or
- d. the Licensee occupies Licensor's conduit system without having first been issued authorization therefor; or
- e. the Licensee, subject to the provisions specified in Article III (5), should cease to provide its services.
- f. the Licensees' facilities are used by others not a party to this Agreement.
- g. the Licensee sublets or apports part of the Licensed Conduit System to an entity not a party to this Agreement.

2. The Licensor will promptly notify the Licensee in writing of any instances cited in Article VII (1) preceding. The Licensee shall take corrective action as necessary to eliminate the noncompliance and shall confirm in writing to the Licensor within thirty (30) days following such written notice that the noncompliance has ceased or been corrected. If Licensee fails to discontinue such noncompliance or to correct same and fails to give the required written confirmation to the Licensor within the time stated above, the Licensor may terminate the occupancy authorizations granted hereunder for the conduit or manhole to which such noncompliance shall have occurred.

3. Conduit system occupancy authorizations and rights as granted under provisions of this Agreement may be immediately terminated by the Licensor if:

a. the Licensee's insurance carrier shall at any time notify the Licensor that the policy or policies of insurance as required in Article V (1) will be or have been cancelled or amended so that those requirements will no longer be satisfied; or

b. the Licensee shall fail to pay any sum due or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory security as required in Article V (2).

c. any authorization which may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's facilities in the conduit system is denied, revoked or cancelled.

4. Licensee may at any time remove its facilities from a conduit system after first giving the Licensor written notice of Licensee's intention to so remove its facilities (Exhibit C).

5. In the event of termination of any of the Licensee's authorizations hereunder, the Licensee will remove its facilities from the conduit system within thirty (30) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's facilities are actually removed from the conduit system. If the Licensee fails to remove its facilities within the specified period, the Licensor shall have the right to remove such facilities at the Licensee's expense and without any liability on the part of the Licensor for damage or injury to such facilities or interruption of Licensee's services.

6. When Licensee's facilities are removed from a Licensor's conduit system, no occupancy in the same conduit system shall be permitted until the Licensee has first complied with all of the provisions of this Agreement as though no such conduit system occupancy had been previously made and all outstanding charges due to the Licensor for conduit system occupancy have been paid in full.

7. Prior to terminating or revoking any license under this Agreement or the Agreement itself for whatever cause or purpose, a petition may be brought, by either party, to the Public Service Commission requesting the Commission to decide the dispute. A Public Service Commission determination shall be binding on all parties to this Agreement. However, the right of the Licensor or Licensee for judicial review of the Commission's determination remains.

## ARTICLE VIII

### RATES AND CHARGES

The Licensee is responsible for payment of all rates, charges and costs as specified elsewhere in this Agreement and as set forth below. Licensee shall be responsible for payment of all charges for preconstruction survey and Make-Ready work in advance for work performed or expenses incurred by the Licensor regardless of whether Licensee subsequently withdraws its application for occupancy authorizations for the conduit system as to which such work is performed.

Licensee agrees that, in the event Licensee fails to pay an amount due and owing within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 1/2% per month for each month from the expiration of such period until payment is received by Licensor.

1. Conduit Occupancy Rate

The conduit rates shall be as specified in a schedule currently filed with Public Service Commission (Exhibit D).



2. Charges for Make-Ready Work

Make-Ready charges shall be billed in advance. Work on individual conduit sections shall not commence prior to receipt of payment. All charges for surveys, inspections, engineering, rodding, swabbing, placement and removal of cable and any other charges for worked performed for Licensee or fees paid by Licensor on account of Licensee's presence in the conduit system, shall be based upon the full cost to Licensor for performing such work and a premium of 35% shall be added to the Licensor's full costs incurred on the investment of the labor hours and materials used. When Licensor employs an outside contractor rather than its own work forces to perform Make-Ready, Licensee shall pay an amount equal to the contractor's fees plus a premium equal to no more than 10% of those fees. Licensor shall make available copies of all written contracts, agreements, understanding and work orders pertinent to Make-Ready work performed by such contractors.

3. Charges for Inspections

a. The cost of the initial post-construction inspection shall be billed as part of the charges for Make-Ready work.

b. The cost of periodic inspections will be billed to the Licensee upon completion of the inspection by the Licensor.

c. Licensee shall pay the cost of subsequent inspections to insure correction of variances from required construction and maintenance practices, determined to exist through post-construction or periodic inspections.

4. Payment of Rates and Charges

Unless otherwise provided elsewhere in this Agreement, Licensee shall pay all rates and charges, as specified in the Agreement and/or in a schedule currently filed with the Public Service Commission, within thirty (30) days from the dates of billing thereof.

ARTICLE IX

EQUAL EMPLOYMENT OPPORTUNITIES

Licensee affirms that the Equal Employment Opportunity provisions required by law, regulation or executive order to be incorporated in this Agreement as set forth in a Compliance Undertaking prepared by Licensor have been read and signed by Licensee, and that the said Compliance Undertaking has been delivered to Licensor. Such Compliance Undertaking shall continue in effect until specifically withdrawn in writing by Licensee (Exhibit G).

ARTICLE X

LICENSE NOT EXCLUSIVE

Nothing herein contained shall be construed as a grant of any exclusive license, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any conduit systems covered by this Agreement.

ARTICLE XI

WAIVER OR TERMS AND CONDITIONS

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement or the licenses granted hereunder terminated shall not constitute a waiver or relinquishment of any such term, condition or act but the same be and remain at all times in full force and effect.